

**ZONING BOARD OF ADJUSTMENT
MINUTES
APRIL 1, 2003
(Approved as amended 5/6/03)**

PRESENT: Forrest Esenwine, Chairman; Terry Knowles, Vice Chairperson; Leon Methot; June Purington; Naomi Bolton, Land Use Coordinator.

GUESTS: Everett Stone, Code Enforcement Officer; Frank Campana; Robert Starace; Gene Archambault; Ginger Esenwine.

I. CALL TO ORDER:

Chairman Forrest Esenwine called this meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Esenwine asked all the members present to introduce themselves.

II. PUBLIC HEARINGS:

Case #0603 Strategic Contracting, LLC (Owner: Robert Starace)
Variance, Article 17, Section 17.1.1
Applicant is proposing to permit the already built \$250,000 home to remain with the Martin Road access.
Tax Map 108-014 141 Martin Road

Rob Starace from Strategic Contracting was present and stated that he is here for a variance. Mr. Starace handed the board copies of more information. Mr. Starace stated that he started with the property on November 12, 2002 when George Merrill brought him out to the property. He liked it. It was for sale. Mr. Starace made it contingent on the purchase and sales which stated "this contract is null and void at the buyers discretion if driveway access off Martin Road is not approved by Town." Mr. Merrill had already been dealing with the Town on this. Mr. Starace referenced a letter dated October 2002 from the State of NH which discusses safety concerns with a driveway that would be created off of Route 114 for this lot. Mr. Merrill then brought this letter to the Board of Selectmen on November 25, 2002. In the minutes the Board of Selectmen asked if Mr. Merrill was going to upgrade and the response was yes. It was understood by Mr. Merrill that any upgrades to the road were to become the property of the Town. After that meeting Mr. Merrill obtained a driveway permit from the Town. Then Mr. Starace closed on the property with Mr. Merrill. Mr. Starace then applied for a

building permit. It was held up because there was some question whether it was going to be approved. After the January 6, 2003 meeting with the Selectmen, the building permit was issued per the Board of Selectmen. Mr. Starace stated that he feels that he has met all the conditions. He has a driveway permit. He has a building permit. He has had all the proper inspections. The only thing he needs now is the certificate of occupancy. Mr. Starace got a letter from the Town stating that he has to go for a variance before he can obtain a certificate of occupancy. Mr. Starace stated that he felt he has everything he needs.

Chairman Esenwine responded that one of the problems here is, that unfortunately our Board of Selectmen acted out of turn, which is not Mr. Starace's fault. Now we are trying to rectify it and get it back in place in the proper procedure. Had this been done in the proper procedure, we probably wouldn't be here right now. Chairman Esenwine then discussed the driveway permit, which states that the property is located on a Class V road (Martin Road), where it really should be on a Class VI road (Maplewold Road).

Terry Knowles then stated that she is very concerned with this. The proper procedure was not followed. The Town is in the position where this gentleman has constructed a house without getting the appropriate permits. This is a problem.

Chairman Esenwine stated that this board is damned if we do or damned if we don't.

Mrs. Knowles stated that the proper procedure was not followed and it is not Mr. Starace's fault. Mr. Starace was led to believe it was one procedure, he was not told that he had to come before the zoning board before he could go any further, that is the problem.

June Purington added that if this lot didn't have frontage on Route 114, you would not be able to build a house on that lot. Now you want to use frontage on a Class VI road to access the lot.

Mr. Starace stated that if we go a little bit further, the Selectmen ordered a legal opinion on this from Wadleigh, Starr & Peters, Mr. Dean Eggert gave the opinion. The Selectmen based their decision to issue the driveway permit based on Attorney Gosling's opinion, who was George Merrill's attorney. In this legal opinion it states twice that Mr. Eggert agrees with Attorney Gosling's conclusion. Further down in Mr. Eggert's opinion, it states that there is an argument that can be made that 674:41 does not apply to this parcel, due to the frontage on Route 114. However, the first paragraph specifically refers to the street giving access to the lot upon which such building is supposed to be placed.

Mr. Starace stated that he also sought out an attorney. His attorney pointed out that if you go over to 674:41 and read the first paragraph it says exactly what Mr.

Eggert states, but if you don't go all the way through it, you miss Roman III, which says "for purposes of paragraph I the street giving access to the lot means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right of way." Mr. Starace stated that his lawyer's opinion was, that as long as he has road frontage on something less than a Class V road, it doesn't matter where he accesses it from, with the Town approval.

The board discussed RSA 674:41 for a while. The board discussed the liability. Mr. Starace stated that he has an agreement and release that needs to be signed and recorded at the registry of deeds. The board then discussed the difference of discontinuing a road versus abandoning a road.

Leon Methot stated that reviewing the minutes of the Selectmen's meetings, they gave Mr. Merrill authority to improve that section to be used as a driveway for single family use. Mr. Methot added "which mystifies me as to why you are here. There is really no need for you to be here because the Board of Selectmen are the only ones that can authorize any work to be done on any Class VI road."

Chairman Esenwine stated that he thought what he was here for is, a variance that will allow him to access it from here, rather than Route 114, which is what the original intent was.

Mr. Methot responded that from what he read here, the Board of Selectmen already gave him that authority.

Terry Knowles then asked Everett Stone to clarify something. "This gentleman has 200 feet frontage on Class V or better road. Show me in the zoning ordinance the word 'access' that says he has to access off of Route 114. He's got the frontage. Where does it say the access has to come off that 200 feet of frontage?"

Naomi responded that was one of the changes made to the zoning this March. Everett Stone stated that zoning is not retroactive. Mrs. Knowles stated that his building permit pre-dates that. The question is, do we as a board need to act? Mrs. Knowles stated, "he has his 200 feet of frontage. He has permission from the Selectmen to use Maplewold Road, a Class VI road. Where does it say he has to use Route 114?"

Chairman Esenwine read the old definition of frontage and then went to the definition of street. Mrs. Knowles stated that she is looking for the word access and a definition, which is not there.

June Purington stated that Article 17.1.1 concerns building permits and not driveway access, so this variance doesn't fall under 17.1.1 at all. The board agreed.

Everett Stone went through the process of how the driveway permit and building permit was obtained. The Board of Selectmen issued the building permit because Mr. Stone wouldn't. Then Mr. Starace went back to the Board of Selectmen, who told him that they made a mistake and now he needs to go in front of zoning.

Chairman Esenwine asked, has the upgrading of Maplewold been done to the specifications of the Road Agent? Mr. Starace responded, he wasn't given any specifications, but John Neville is doing the work and is in constant contact with Mr. Knapp.

Mr. Methot stated, "so essentially there is no reason for Mr. Starace to be here, because the Board of Selectmen already gave him authority to do improvements on a Class VI road, which they have the authority to."

Mrs. Knowles further added, "and in my opinion there is 200 feet of frontage on a Class V or better road."

Mr. Methot continued, "he has lot frontage, but because of his letter from the State, which didn't deny access but they felt it would be very dangerous to construct the driveway there. Basically he has the authority by the Board of Selectmen to do whatever upgrades that the Road Agent will allow you to do, by his standards and he has the final say on what gets done there. You have the frontage, so Article 17.1.1 doesn't come into play."

Naomi asked for clarification, "he needs a final inspection on the driveway prior to an occupancy. So if Carl goes out and is happy with access then he can go ahead and get his occupancy with Everett?"

Mr. Methot responded, "exactly."

Mrs. Knowles added, "that's absolutely my feeling. I think because of when you came in and the process that you went through and the frontage is definitely there. We never connected the frontage to access, that's been a problem we've had. Common sense wise, I agree with you Forrest, but we have to look at what we have. My feeling is, I agree with Leon and I don't think this board needs to rule on it.

Mr. Methot added, "so the gentleman has a choice, he can withdraw his application and give up whatever money he paid. He can go merrily on his way and get his driveway approved and occupancy."

Chairman Esenwine stated that his only concern is the close proximity to that existing house. You can touch that as you go by with the car.

Mr. Starace responded, she had her tank in the right of way and was using it as her driveway, why would she be granted the use and not him.

Mr. Methot stated, that is a pre-existing condition. Mr. Starace added, that he agreed it is unfortunate.

Mrs. Knowles stated “that up until March the frontage is there. The Selectmen issued a building permit. You built your house in good faith. I don’t really see where there is a roll for us in this.”

Mr. Stone added, “it’s too bad it wasn’t done clearly along the whole process.”

Mr. Methot also added, “because he has gotten so far into the project, the Town is estopped from prohibiting from him using the house.”

Naomi asked the board if the agreement and release form needs to be signed and put in the Selectmen’s box for their signatures. The board stated that yes it does need to be executed.

Mr. Starace then officially stated that for the record his application is being withdrawn.

Chairman Esenwine closed this hearing at 8:15 PM.

IV. OTHER BUSINESS:

MARCH 4, 2003 MINUTES: Forrest Esenwine moved to approve the March 4, 2003 minutes as amended, June Purington seconded the motion, all in favor.

V. ADJOURNMENT:

As there was no further business to come before the board, June Purington moved to adjourn at 8:17 PM, Terry Knowles seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator